



**[BILLING CODE 6750-01S]**

**FEDERAL TRADE COMMISSION**

**16 CFR Part 803**

**Premerger Notification; Reporting and Waiting Period Requirements**

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, with the concurrence of the Assistant Attorney General, Antitrust Division, Department of Justice, announces ministerial changes to the Antitrust Improvements Act Notification and Report Form ("HSR Form") to make it conform to recently published amendments to the associated Instructions and to reflect changes to the noncompliance penalty and the Premerger Notification Office address.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Robert Jones, Federal Trade Commission, Bureau of Competition, Premerger Notification Office, 400 7th Street, S.W., Room #5301, Washington, DC 20024, Phone (202) 326-3100.

**SUPPLEMENTARY INFORMATION:**

**Introduction**

Section 7A of the Clayton Act (the "Act") requires the parties to certain mergers and acquisitions to file notifications with the Federal Trade Commission ("the Commission") and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice ("the Assistant Attorney General") (collectively "the Agencies") and to wait a specified period of time before consummating such transactions. The reporting requirement and the waiting period that it triggers are intended to enable the Agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a

preliminary injunction in federal court to prevent consummation, pursuant to Section 7 of the Act.

Section 7A(d)(1) of the Act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General, in accordance with the Administrative Procedure Act, 5 U.S.C. 553, to require that premerger notification be in such form and contain such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws. Section 7A(d)(2) of the Act, 15 U.S.C. 18a(d)(2), grants the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, the authority to define the terms used in the Act and prescribe such other rules as may be necessary and appropriate to carry out the purposes of §7A. Pursuant to that authority, the Commission, with the concurrence of the Assistant Attorney General, developed the Rules, codified in 16 CFR Parts 801, 802 and 803, and the HSR Form and its associated Instructions, codified at Part 803--Appendix. The Rules, codified in 16 CFR Parts 801, 802 and 803, and associated Forms and Instructions, codified at Part 803—Appendix, to govern the form of premerger notifications to be provided by merging parties. The HSR Form is designed to provide the Commission and the Assistant Attorney General with the information and documentary material necessary for an initial evaluation of the potential anticompetitive impact of significant mergers, acquisitions and certain similar transactions.

### **Changes to the HSR Form**

The Commission is amending the HSR Form so that it will conform to the recently published amendments to the associated Instructions and reflect changes in the noncompliance penalty and the Premerger Notification Office address.<sup>1</sup> The changes are as follows:

1. **Fee Information** – The Commission has deleted the following language (along with

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<sup>1</sup> 81 FR 60257 (September 1, 2016).

an attachment box) from page one of the HSR Form: "In cases where your filing fee would be higher if based on acquisition price or where the acquisition price is undetermined to the extent that it may straddle a filing fee threshold, attach an explanation of how you determined the appropriate fee." The Commission eliminated this requirement in its amended Instructions. Thus, the language and the box have been deleted from the HSR Form.

2. **Form Revised Date** – The HSR Form's "Revised Date" on the bottom of each page has been updated from "(rev. 08/18/11)" to "(rev. 01/02/2017)" to reflect the ministerial revisions described in this notice.

3. **Penalty** – The HSR Form, on page 10, refers to a noncompliance penalty of \$16,000 per day. By statute,<sup>2</sup> the Commission is required to adjust its civil penalty amounts for inflation every January. The HSR Form has been amended to omit the specific dollar amount and instead cross-reference 16 C.F.R. § 1.98(a), which lists the inflation-adjusted civil penalty.

4. **PNO Address** – The address of the Premerger Notification Office ("PNO") on page 10 of the HSR Form has been updated to reflect the PNO's current address in Constitution Center.

5. **Electronic Form Version** – The Electronic Form Version has been updated from "1.0.1, 01/13/2012" to "1.0.2, 01/02/2017" to reflect the ministerial changes described in this notice.

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<sup>2</sup> Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, 104 Stat. 890, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, sec. 701, 129 Stat. 599.

### **Administrative Procedure Act**

The Commission finds good cause to adopt these changes without prior public comment. Under the APA, notice and comment are not required “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(3)(B).

The Commission is updating the HSR Form so that it will conform to the recently published amendments to the associated Instructions. This does not involve any substantive changes in the Rules’ requirements for entities subject to the Rules. Accordingly, the Commission finds that public comment is unnecessary.

In addition, under the APA, a substantive final rule is required to take effect at least 30 days after publication in the Federal Register unless an agency finds good cause that the rule should become effective sooner. 5 U.S.C. 553(d). However, these are purely ministerial changes and do not constitute a substantive rule change. Therefore, the Commission finds good cause to dispense with a delayed effective date.

For these reasons, the Commission finds that there is good cause for adopting this final rule as effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], without prior public comment.

### **Regulatory Flexibility Act**

Under the Regulatory Flexibility Act (“RFA”), 5 U.S.C. 601-612, an agency must prepare a regulatory flexibility analysis for all proposed and final rules that describes the impact of the rule on small entities, unless the head of the agency certifies that the rule will not have a “significant economic impact on a substantial number of small entities.” 5 U.S.C. 605(b). However, the RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking. 5 U.S.C. 603(a), 604(a). As discussed above, the Commission has determined for good cause that the APA does not require notice and public comment on this rule. Accordingly, the RFA does not apply to this final rule.

### **Paperwork Reduction Act**

These changes do not contain any record maintenance, reporting or disclosure requirements that would constitute agency “collections of information” that would have to be submitted for clearance and approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3518.

### **List of Subjects in 16 CFR Part 803**

Antitrust.

For the reasons stated above, the Federal Trade Commission amends 16 CFR part 803 as set forth below:

1. The authority citation for part 803 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

2. Revise the appendix to part 803 to read as follows:

### **APPENDIX TO PART 803—NOTIFICATION AND REPORT FORM FOR CERTAIN MERGERS AND ACQUISITIONS**

FEE INFORMATION (For Payer Only)
TAXPAYER IDENTIFICATION NUMBER
OR SOCIAL SECURITY NUMBER FOR NATURAL PERSONS
AMOUNT PAID \$
NAME OF PAYER (if different from PERSON FILING)
WIRE TRANSFER or CERTIFIED CHECK / MONEY ORDER ATTACHED
WIRE TRANSFER CONFIRMATION NO.
FROM (NAME OF INSTITUTION)

IS THIS A CORRECTIVE FILING? YES NO
CASH TENDER OFFER? YES NO
BANKRUPTCY? YES NO
DO YOU REQUEST EARLY TERMINATION OF THE WAITING PERIOD? YES NO
(voluntary) IS THIS ACQUISITION SUBJECT TO NON-US FILING REQUIREMENTS? YES NO
IF YES, list jurisdictions:

ITEM 1
1(a) PERSON FILING
NAME
HEADQUARTERS ADDRESS
ADDRESS LINE 2
CITY, STATE, COUNTRY
ZIP CODE
WEB SITE

1(b) PERSON FILING NOTIFICATION IS
an acquiring person
an acquired person
both

1(c) PUT AN "X" IN THE APPROPRIATE BOX TO DESCRIBE THE PERSON FILING NOTIFICATION
Corporation
Unincorporated Entity
Natural Person
Other (Specify)

1(d) DATA FURNISHED BY
calendar year
fiscal year (specify period): (month/year) to (month/year)

1(e) PUT AN "X" IN THE APPROPRIATE BOX BELOW AND GIVE THE NAME AND ADDRESS OF THE ENTITY FILING NOTIFICATION, IF DIFFERENT THAN THE ULTIMATE PARENT ENTITY
Not Applicable
This report is being filed on behalf of a foreign person pursuant to § 803.4.
This report is being filed on behalf of the ultimate parent entity by another entity within the same person authorized by it to file pursuant to § 803.2(a).

NAME
ADDRESS
CITY, STATE, COUNTRY
ZIP CODE

1(f) NAME AND ADDRESS OF ENTITY MAKING ACQUISITION OR WHOSE ASSETS, VOTING SECURITIES OR NON-CORPORATE INTERESTS ARE BEING ACQUIRED, IF DIFFERENT FROM THE ULTIMATE PARENT ENTITY IDENTIFIED IN ITEM 1(a)

NAME
ADDRESS
CITY, STATE, COUNTRY
ZIP CODE
Not Applicable

PERCENT OF VOTING SECURITIES OR NON-CORPORATE INTERESTS THAT THE UPE HOLDS DIRECTLY OR INDIRECTLY IN THE ACQUIRING OR ACQUIRED ENTITY IDENTIFIED IN ITEM 1(f) %

1(g) IDENTIFICATION OF PERSONS TO CONTACT REGARDING THIS REPORT

CONTACT PERSON 1
FIRM NAME
BUSINESS ADDRESS
CITY, STATE, COUNTRY
ZIP CODE
TELEPHONE NUMBER
FAX NUMBER
E-MAIL ADDRESS
CONTACT PERSON 2
FIRM NAME
BUSINESS ADDRESS
CITY, STATE, COUNTRY
ZIP CODE
TELEPHONE NUMBER
FAX NUMBER
E-MAIL ADDRESS

1(h) IDENTIFICATION OF AN INDIVIDUAL LOCATED IN THE UNITED STATES DESIGNATED FOR THE LIMITED PURPOSE OF RECEIVING NOTICE OF ISSUANCE OF A REQUEST FOR ADDITIONAL INFORMATION OR DOCUMENTS (See § 803.20(b)(2)(iii))

NAME
FIRM NAME
BUSINESS ADDRESS
CITY, STATE, COUNTRY
ZIP CODE
TELEPHONE NUMBER
FAX NUMBER
E-MAIL ADDRESS

**ITEM 2****2(a) LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL  
ACQUIRING PERSONS**

NAME	NON-REPORTABLE
	<input type="checkbox"/>

**LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL  
ACQUIRED PERSONS**

NAME	NON-REPORTABLE
	<input type="checkbox"/>

**2(b) THIS ACQUISITION IS (put an "X" in all the boxes that apply)**

- |  |  |
|--|--|
| <input type="checkbox"/> an acquisition of assets  | <input type="checkbox"/> a consolidation (see § 801.2)             |
| <input type="checkbox"/> a merger (see § 801.2)  | <input type="checkbox"/> an acquisition of voting securities       |
| <input type="checkbox"/> an acquisition subject to § 801.2 (e)   | <input type="checkbox"/> a secondary acquisition                   |
| <input type="checkbox"/> a formation of a joint venture or other corporation or unincorporated entity (see § 801.40 or § 801.50) | <input type="checkbox"/> an acquisition subject to § 801.31        |
| <input type="checkbox"/> an acquisition subject to § 801.30 (specify type)   | <input type="checkbox"/> an acquisition of non-corporate interests |
|  | <input type="checkbox"/> other (specify)                           |

**2(c) INDICATE THE HIGHEST NOTIFICATION THRESHOLD IN § 801.1(h) FOR WHICH THIS FORM IS BEING FILED  
(acquiring person only in an acquisition of voting securities)**

- |  |   |   |  |                              |                              |
|--|---|---|--|------------------------------|------------------------------|
| <input type="checkbox"/> \$50 million<br>(as adjusted) | <input type="checkbox"/> \$100 million<br>(as adjusted) | <input type="checkbox"/> \$500 million<br>(as adjusted) | <input type="checkbox"/> 25% (see Instructions)<br>(as adjusted) | <input type="checkbox"/> 50% | <input type="checkbox"/> N/A |
|--|---|---|--|------------------------------|------------------------------|

<b>2(d)(i) VALUE OF VOTING SECURITIES ALREADY HELD (\$MM)</b>	<b>(v) VALUE OF NON-CORPORATE INTERESTS ALREADY HELD (\$MM)</b>	
\$	\$	
<b>(ii) PERCENTAGE OF VOTING SECURITIES ALREADY HELD</b>	<b>(vi) PERCENTAGE OF NON-CORPORATE INTERESTS ALREADY HELD</b>	
%	%	
<b>(iii) TOTAL VALUE OF VOTING SECURITIES TO BE HELD AS A RESULT OF THE ACQUISITION (\$MM)</b>	<b>(vii) TOTAL VALUE OF NON-CORPORATE INTERESTS TO BE HELD AS A RESULT OF THE ACQUISITION (\$MM)</b>	<b>(ix) VALUE OF ASSETS TO BE HELD AS A RESULT OF THE ACQUISITION (\$MM)</b>
\$	\$	\$
<b>(iv) TOTAL PERCENTAGE OF VOTING SECURITIES TO BE HELD AS A RESULT OF THE ACQUISITION</b>	<b>(viii) TOTAL PERCENTAGE OF NON- CORPORATE INTERESTS TO BE HELD AS A RESULT OF THE ACQUISITION</b>	<b>(x) AGGREGATE TOTAL VALUE (\$MM)</b>
%	%	\$

ITEM 3

3(a) DESCRIPTION OF ACQUISITION

ACQUIRING UPE(S)	ACQUIRED UPE(S)
NAME	NAME
ADDRESS	ADDRESS
ADDRESS LINE 2	ADDRESS LINE 2
CITY, STATE	CITY, STATE
ZIP CODE, COUNTRY	ZIP CODE, COUNTRY
ACQUIRING ENTITY(S)	ACQUIRED ENTITY(S)
NAME	NAME
ADDRESS	ADDRESS
ADDRESS LINE 2	ADDRESS LINE 2
CITY, STATE	CITY, STATE
ZIP CODE, COUNTRY	ZIP CODE, COUNTRY

TRANSACTION DESCRIPTION

3(b) SUBMIT A COPY OF THE MOST RECENT VERSION OF THE CONTRACT OR AGREEMENT (or letter of intent to merge or acquire)

(IF SUBMITTING PAPER, DO NOT ATTACH THE DOCUMENT TO THIS PAGE)

ATTACHMENT NUMBER



NAME OF PERSON FILING NOTIFICATION	DATE
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**ITEM 4**

PERSONS FILING NOTIFICATION MAY PROVIDE BELOW AN OPTIONAL INDEX OF DOCUMENTS REQUIRED TO BE SUBMITTED BY ITEM 4 (*See Item by Item instructions*). THESE DOCUMENTS SHOULD NOT BE ATTACHED TO THIS PAGE.

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**4(a)** ENTITIES WITHIN THE PERSON FILING NOTIFICATION THAT FILE ANNUAL REPORTS WITH THE SECURITIES AND EXCHANGE COMMISSION ☐ None

CENTRAL INDEX  
KEY NUMBER

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**4(b)** ANNUAL REPORTS AND ANNUAL AUDIT REPORTS ☐ None

ATTACHMENT OR  
REFERENCE NUMBER

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**4(c)** STUDIES, SURVEYS, ANALYSES, AND REPORTS ☐ None

ATTACHMENT OR  
REFERENCE NUMBER

--	--	--

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**4(d)** ADDITIONAL DOCUMENTS ☐ None

ATTACHMENT OR  
REFERENCE NUMBER

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ITEM 5

5(a) DOLLAR REVENUES BY NON-MANUFACTURING INDUSTRY CODE AND BY MANUFACTURED PRODUCT CODE

Check None at the bottom of the page and provide explanation if you are not reporting revenue

6-DIGIT INDUSTRY CODE AND/OR 10-DIGIT PRODUCT CODE	DESCRIPTION	YEAR	TOTAL DOLLAR REVENUES (\$MM)

Attachment:

			<input type="checkbox"/> Overlap	
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NONE ☐ (PROVIDE EXPLANATION)

NAME OF PERSON FILING NOTIFICATION

DATE

**5(b)** COMPLETE ONLY IF ACQUISITION IS IN THE FORMATION OF A JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY

☐ Not Applicable

**5(b)(i)** CONTRIBUTIONS THAT EACH PERSON FORMING THE JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY HAS AGREED TO MAKE

Attachment:

**5(b)(ii)** DESCRIPTION OF CONSIDERATION THAT EACH PERSON FORMING THE JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY WILL RECEIVE

Attachment:

**5(b)(iii)** DESCRIPTION OF THE BUSINESS IN WHICH THE JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY WILL ENGAGE

Attachment:

**5(b)(iv)** SOURCE OF DOLLAR REVENUES BY 6-DIGIT INDUSTRY CODE (non-manufacturing) AND BY 10-DIGIT PRODUCT CODE (manufactured)

Attachment:

CODE	DESCRIPTION

**ITEM 6****6(a) ENTITIES WITHIN PERSON FILING NOTIFICATION**

Attachment:

NAME	CITY	STATE	COUNTRY

**6(b) HOLDERS OF PERSON FILING NOTIFICATION**

Attachment:

ISSUER/ UNINCORPORATED ENTITY	SHAREHOLDER/ INTEREST HOLDER	HQ ADDRESS	% HELD

**6(c)(i) HOLDINGS OF PERSON FILING NOTIFICATION**

Attachment:

UPE OF FILING PERSON	ISSUER/ UNINCORPORATED ENTITY	% HELD

**6(c)(ii) HOLDINGS OF ASSOCIATES (ACQUIRING PERSON ONLY)**

Attachment:

TOP LEVEL ASSOCIATE	ISSUER/ UNINCORPORATED ENTITY	% HELD

**ITEM 7**

## OVERLAP DOLLAR REVENUES

**7(a)** 6-DIGIT NAICS INDUSTRY CODE AND DESCRIPTION☐ None

CODE	DESCRIPTION	PERSON / ASSOCIATE / BOTH

**7(b)(i)** LIST THE NAME OF EACH PERSON THAT ALSO DERIVED DOLLAR REVENUES

UPE OF OTHER FILING PERSON	ENTITY THAT OVERLAPS (IF DIFFERENT)

**7(b)(ii)** LIST THE NAME OF EACH ASSOCIATE OF THE ACQUIRING PERSON THAT ALSO DERIVED DOLLAR REVENUES  
(ACQUIRING PERSON ONLY)

TOP LEVEL ASSOCIATE	ENTITY THAT OVERLAPS (IF DIFFERENT)

**7(c)** GEOGRAPHIC MARKET INFORMATION FOR EACH PERSON THAT ALSO DERIVED DOLLAR REVENUES

CODE	GEOGRAPHIC MARKET INFORMATION

**7(d)** GEOGRAPHIC MARKET INFORMATION FOR ASSOCIATES OF THE ACQUIRING PERSON  
(ACQUIRING PERSON ONLY)

CODE	GEOGRAPHIC MARKET INFORMATION

**ITEM 8**

## PRIOR ACQUISITIONS (ACQUIRING PERSON ONLY)

NAICS Code				
Acquired Entity				
Former HQ Address				
Acquisition Type	<input type="checkbox"/> Securities	<input type="checkbox"/> Assets	<input type="checkbox"/> Non Corporate Interests	
Notes				

**CERTIFICATION**

This **NOTIFICATION AND REPORT FORM**, together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with instructions issued by the Federal Trade Commission. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required data, the information is, to the best of my knowledge, true, correct, and complete in accordance with the statute and rules.

NAME (Please print or type)

TITLE

SIGNATURE

DATE

Subscribed and sworn to before me at the

City of \_\_\_\_\_, State of \_\_\_\_\_

[SEAL]

this \_\_\_\_\_ day of \_\_\_\_\_, the year \_\_\_\_\_

Signature \_\_\_\_\_

My Commission expires \_\_\_\_\_

**16 C.F.R. Part 803 - Appendix**  
**NOTIFICATION AND REPORT FORM FOR CERTAIN MERGERS AND ACQUISITIONS**Approved by OMB  
3084-0005**Attach the Affidavit required by § 803.5 to the Form.****THE INFORMATION REQUIRED TO BE SUPPLIED ON THESE ANSWER SHEETS IS SPECIFIED IN THE INSTRUCTIONS**

THIS FORM IS REQUIRED BY LAW and must be filed separately by each person which, by reason of a merger, consolidation or acquisition, is subject to §7A of the Clayton Act, 15 U.S.C. §18a, as added by Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435, 90 Stat. 1390, and rules promulgated thereunder (hereinafter referred to as "the rules" or by section number). The statute and rules are set forth in the *Federal Register* at 43 FR 33450; the rules may also be found at 16 CFR Parts 801-03. Failure to file this **Notification and Report Form**, and to observe the required waiting period before consummating the acquisition in accordance with the applicable provisions of 15 U.S.C. §18a and the rules, subjects any "person," as defined in the rules, or any individuals responsible for noncompliance, to liability for a penalty for each day during which such person is in violation of 15 U.S.C. §18a. The maximum daily civil penalty amount is listed in 16 C.F.R. §1.98(a).

Pursuant to the Hart-Scott-Rodino Act, information and documentary material filed in or with this Form is confidential. It is exempt from disclosure under the Freedom of Information Act, and may be made public only in an administrative or judicial proceeding, or disclosed to Congress or to a duly authorized committee or subcommittee of Congress.

**DISCLOSURE NOTICE** - Public reporting burden for this report is estimated to vary from 8 to 160 hours per response, with an average of 37 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this report, including suggestions for reducing this burden to:

Premerger Notification Office, Federal Trade Commission, 400 7th St. SW, Room # 5301, Washington, DC 20024  
and  
Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503

Under the **Paperwork Reduction Act**, as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. That number is 3084-0005, which also appears above.

**Privacy Act Statement**--Section 18a(a) of Title 15 of the U.S. Code authorizes the collection of this information. Our authority to collect Social Security numbers is 31 U.S.C. 7701. The primary use of information submitted on this Form is to determine whether the reported merger or acquisition may violate the antitrust laws. Taxpayer information is collected, used, and may be shared with other agencies and contractors for payment processing, debt collection and reporting purposes. Furnishing the information on the Form is voluntary. Consummation of an acquisition required to be reported by the statute cited above without having provided this information may, however, render a person liable to civil penalties up to the amount listed in 16 C.F.R. §1.98(a) per day. We also may be unable to process the Form unless you provide all of the requested information.

**This page may be omitted when submitting the Form.**

By direction of the Commission.

Donald S. Clark,  
Secretary

[FR Doc. 2017-14550 Filed: 7/11/2017 8:45 am; Publication Date:  
7/12/2017]